

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**UNITED STATES OF AMERICA,**

**CRIMINAL NO. 15-20082**

**HON. BERNARD A. FRIEDMAN**

**DAVID HART,**

**Defendant.**

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**SENTENCING MEMORANDUM OF THE UNITED STATES  
AS TO DEFENDANT DAVID HART**

The United States of America, by and through its attorneys, Matthew Schneider, United States Attorney for the Eastern District of Michigan, and David A. Gardey and Dawn N. Ison, Assistant United States Attorneys, respectfully submit this Sentencing Memorandum regarding David Hart.

**I. INTRODUCTION**

David Hart held several high level positions for the International Union of Operating Engineers Local 324 between 2003 and 2012. He was first entrusted as a business agent, responsible for dispatching union members to various jobs. In 2009, Local 324 union members elected him their Financial Secretary which obligated him to take receipt of all union dues and other monies received by the union and secure their transfer to the general treasurer of the International Union of

Engineers. Hart also served as director of Information Technology for the union. And he later served as Chief of Staff and Assistant to the Business Manager, John Hamilton. It is during the time that Hart served so closely under Hamilton that Hart would breach the trust afforded him by the 18,000 Local 324 union members and become beholden to Hamilton, carrying out and enforcing Hamilton's extortionate scheme for Hamilton's personal gain, all to the detriment of the union and its members who had entrusted Hart (and Hamilton) to put their best interests first.

## **II. ARGUMENT**

### **A. The Nature and Circumstances of Hart's Crime (18 U.S.C. § 3553(a)(1))**

#### **1. Hart's Duty to Serve the Members of Local 324**

After having worked in the field oiling cranes as a member of Local 324 for approximately seven years, Hart became a business agent for Local 324, in 2003. Although appointed by Hamilton to this position, Local 324 employs the business manager and the staff of business agents and support personnel to run the affairs of the union. As a business agent, Hart shared Hamilton's obligation to the Local 324 membership and by extension was "directly responsible to the membership" of Local 324, and "authorized and empowered to direct and conduct the business affairs of the Local Union, at all times representing the *entire* membership." Art. XXIV, Section 1 Bylaws of International Union of Operating Engineers Local Union 324 (emphasis added).

Hart would later serve in many other high-level capacities. And, in 2009, he would be elected by his fellow union brothers as the Financial Secretary. As such, Hart held a position of trust to his union brethren, but over the course of Hart's service to the union, between 2003 and 2012, Hart would forget for whom he served. Instead of fulfilling his duty as an elected officer and representative of the members of Local 324, Hart would betray the trust of the Local 324 members and spiral into the web of extortion perpetrated by John Hamilton on union business agents and union staff.

**2. Hart had Actual Knowledge of Hamilton's Extortionate Scheme**

Between 2003 and 2012, Hamilton forced business agents to pay \$100 per week into the Hamilton Slate Fund, purportedly for the purpose of financing the campaign for Hamilton and the slate of candidates running with him during union elections. Business managers who served before Hamilton also maintained similar funds for this purpose. But, by all accounts, the campaign fund maintained by the prior business manager, was voluntary, and the business agents paid a mere \$25 per week into it. When Hamilton became business manager, he steadily increased the amount of the contributions until by 2006, union business agents were paying \$100 per week or \$5,200 yearly into Hamilton's slate fund. The compulsory nature of the contributions and the fact that Hamilton used significant portions of the slate funds for his own personal enrichment, not only made the contributions

into the slate fund different from those in the past, but also made them unlawful. Hart and all the business agents knew that if they refused to pay into the fund Hamilton would fire them, leaving them without the ability to support themselves and their families. Hart also knew that Hamilton's conduct of forcing union agents to contribute to the slate fund violated the law. With full knowledge of the unlawful nature of Hamilton's actions, Hart oftentimes was the conduit through which Hamilton exerted his fear and intimidation to force business agents to pay into the slate fund. By the end of the conspiracy, Hart would have helped Hamilton coerce and intimidate union business agents into each paying tens of thousands of dollars of their hard earned income, salaries supported with union funds, into the fund from which both Hamilton and Hart inappropriately and unlawfully personally benefitted.

### **3. Hart Furthered Hamilton's Extortionate Scheme**

Hart assisted Hamilton in making Hamilton's unlawful intentions and demands clear to the union business agents. Hart became known by union members as one of Hamilton's "right hand men;" "henchmen;" "lackeys;" and, "part of Hamilton's inner circle," along with union President and co-defendant Steven Minella. In several ways, Hart conspired with Hamilton to further Hamilton's extortionate scheme and further the abuse of power Hamilton wielded on union business agents and other union personnel.

Hart knew that business agents had no choice but to pay into the fund or lose their jobs. He himself made involuntary payments into the same fund in order to maintain his employment and he was fully aware that Hamilton's demands violated Michigan law. The Michigan Payment of Wages and Fringe Benefits Act, Section 408.477(1) prohibits an employer from deducting "from the wages of an employee, directly or indirectly, any amount including an employee contribution to a separate segregated fund . . . without the full, free and written consent of the employee, obtained without intimidation or fear of discharge for refusal to permit the deduction." Michigan law also prohibits an "employer, agent or representative of an employer, or other person having authority from the employer to hire, employ, or direct the services of other persons in employment of the employer shall not demand or receive, directly or indirectly from an employee, a fee, gift, tip, gratuity, or other remuneration or consideration, as a condition of employment or continuation of employment." M.C.L.A. § 408.478.

However, in order to conceal his unlawful conduct, Hamilton devised an artifice to circumvent Michigan law—The Wage Authorization form that union business agents were forced to sign and falsely claim that their \$5,200 yearly payments into the slate fund were voluntary. And Hart would help Hamilton perpetrate this fraud by presenting this authorization form to the union business

agents and requiring that they sign it in order to both obtain a job as a business agent and to keep it, knowing that this forceful conduct amounted to extortion.

Hart would also prove instrumental in furthering one of Hamilton's most aggressive demonstrations of instilling fear and intimidation in the union business agents who paid into the fund—the firing of Kenneth Dombrow, the union's auditor, after he complained to some secretaries about making the slate fund payments. In September 2010, Dombrow was serving as the elected auditor of Local 324, and he was employed as a business agent. Dombrow had complained to three secretaries about being forced to make the weekly \$100 payments into the slate fund. One of those secretaries told Hart. After hearing this, Hart confirmed Dombrow's statements with the other secretaries. One of those secretaries begged Hart not to report Dombrow's statements to Hamilton, because she knew, like Hart also knew, that Dombrow would suffer severe consequences if Hamilton found out that Dombrow had complained about making the slate fund payments. Despite that secretary's urgings, Hart, nevertheless, told Hamilton what Dombrow said. Predictably, and as a result of Hart's action, when Hamilton received word that Dombrow had complained about the slate fund payments, Hamilton fired Dombrow. This came as no surprise to all involved and the other union business agents. Hart's actions helped further solidify Hamilton's message to union

business agents that failure to contribute to the fund, or voicing any opposition about contributing into the fund, would cost you your job.

**4. Hart Personally Benefitted from Hamilton's Extortionate Scheme**

In addition to aiding Hamilton's efforts to exert fear and intimidation to force union business agents to pay into the slate fund, Hart also personally benefitted from Hamilton's misuse of union funds. Hart knew first-hand that Hamilton used the slate fund money as his own because Hart himself enjoyed the majority of the expensive meals and liquor that Hamilton used slated funds to pay for as part of what became known as the "Lunch Program." Hart along with Hamilton used tens of thousands of dollars in union funds to pay for meals and liquor on a weekly basis at high-end restaurants in southeast Michigan, during which no union business was conducted or even discussed. Hart was also regularly with Hamilton at the various sports events and at the Detroit Athletic Club where exorbitant expenses for food, liquor and other expenses were improperly charged to the slate fund and union accounts. Hart also facilitated the improper use of the slate fund monies to provide a \$5,000 wedding gift for Hamilton's daughter.

And in the end, once Hamilton's dictatorial reign ended after Hamilton lost the election in 2012, Hart would support Hamilton's final criminal scheme. As Hamilton continued to use the slate fund for his personal gain in the face of defeat,

Hart, too, would join him in the abuse, despite the fact that at the time Hart was still the elected Financial Secretary for Local 324.

On a Saturday evening, in August 2012, Hamilton, Hart and Minella met at Local 324's headquarters. Hart contacted Chief Financial Officer, Michael Pankiewicz to locate the slate fund checkbook and later removed it from the CFO's cabinet in his office. Under Hamilton's direction, Hart (and Minella) wrote a series of seventeen checks from the slate fund checkbook in order to empty out the Hamilton Slate Fund bank account of the \$145,000 remaining. PSR ¶ 12. Hart received three checks totaling \$28,500.000; his wife received one totaling \$8,500.00. *Id.* Hart assisted Hamilton in depriving union business agents' of their rightful claim to the funds remaining in the slate fund following Hamilton's defeat.

Over the course of the conspiracy, Hart personally benefitted from Hamilton's misuse of the slate fund monies through his association and facilitation of Hamilton's criminal scheme in significant ways. And Hart, himself, ultimately improperly converted slate fund money to his own use by writing the series of checks to himself and his wife from the slate fund account. However, as part of the plea agreement, Hart has agreed to pay \$37,000 in restitution for his part in depleting the slate fund account, so that the funds may be returned to their rightful owner, the Local 324 union.



**5. Hart took Affirmative Steps to Assist Hamilton in Concealing His Extortion Through Structuring**

When Hamilton lost the election, Hart continued his misguided devotion to Hamilton and helped Hamilton conceal his final act of extortion and advance yet another crime in the process. On that Saturday evening in August 2012 when Hamilton decided to raid the remaining funds in the slate fund account, Hart and Minella wrote the seventeen checks in amounts less than \$10,000 in order to avoid generating a Currency Transaction Report at the bank. PSR ¶ 12. Hart knew what he was doing was wrong because Hamilton told Hart (and Minella) to write the checks in those amounts in order to avoid “red flags” at the bank. That statement combined with Hart’s experience and training on the board of a credit union that serviced the union, made Hart abundantly aware of the nature of his unlawful conduct. Hart further concealed Hamilton’s crime by not revealing to any of the other business agents who had contributed to the slate fund; nor the CFO responsible for handling the slate fund account, or anyone else, including law enforcement, that they had divvied up the funds in the slate fund account for their own personal gain. In this way, Hart helped Hamilton avoid not only law enforcement scrutiny of his criminal scheme, but also scrutiny by his fellow union brethren who he was elected to serve.

**B. The Seriousness of Hart's Crimes, Just Punishment,  
and Respect for the Law (18 U.S.C. § 3553(a)(2)(A))**

Hart's crime is particularly serious because it adversely impacted the Local 324 union members Hart was entrusted to serve. Knowing that Hamilton was using union funds to personally enrich himself, as a business agent of the union and an elected officer of the union, Hart breached the trust of Local 324 union members by advancing Hamilton's extortionate scheme and further by personally enriching himself and concealing Hamilton's crimes. Local 324 union members were entitled to loyalty from their officers, the type of loyalty that put the best interest of the union members as a whole first. Undeniably, Hart betrayed the members of Local 324 to satisfy the illegal objectives of one individual, one who was even more entrusted with protecting and advancing the best interest of the union. This betrayal of trust should be accounted for in Hart's sentence.

**C. Deterring the Criminal Conduct of Others  
(18 U.S.C. § 3553(a)(2)(B))**

One of the victim's most seriously affected by Hamilton's illegal actions in this case, Kenneth Dombrow, stated during Hamilton's sentencing, "with responsibility comes accountability," and "no one man controls." And nothing could be more true. Unions are formed to protect and further the rights and interests of its members, not the personal interests and objectives of one individual. Hart lost sight of this fundamental tenet of union membership and representation,

and Local 324 suffered as a result. This Court should send a strong message to those entrusted to handle union business and protect and advance the best interest of the union who, rather than faithfully carrying out their responsibility to union members, elect instead to personally enrich themselves and or assist or advance the interest of anyone with that objective, through coercive measures or other illegal methods, will be held responsible for their crimes.

**D. Protecting the Public from Further Crimes by Hart**  
**(18 U.S.C. § 3553 (A)(2)(C))**

Further crimes by Hart are unlikely. Hart has accepted responsibility for his crime and provided significant cooperation in this case. In addition, given this conviction, it is also unlikely that Hart will be put in a position of trust to commit additional crimes in the future.

**III. SENTENCING GUIDELINE CALCULATIONS**

**A. Statutory Maximum Sentence**

As set forth in Title 18, United States Code, Section 4, the maximum sentence that may be imposed on Hart is 3 years. The maximum fine is \$250,000.

**B. Base Offense Level and Specific Offense Characteristics**

**1. Base Offense Level**

Hart's adjusted offense level, including the sole specific offense characteristic based on the amount of loss in this case, was calculated at 14. The

probation department agrees that the appropriate adjusted offense level in this case is 14. (PSIR, ¶¶ 19, 24). Because Hart has no prior criminal convictions, his criminal history category is I. The resultant guideline range calculated by the parties is 10-16 months. The probation department also concurs with the parties' calculation of the sentencing guideline range in the plea agreement. (PSR, ¶ 48).

## 2. 2016 Amendment to U.S.S.G. § 2B1.1

In calculating Hart's sentencing guidelines, the parties relied on the 2015 Guidelines Manual. However, after Hart entered his guilty plea, the United States Sentencing Commission amended § 2B1.1 of the sentencing guidelines, which applies in this case and was used to calculate Hart's original sentencing guideline range. Under the 2015 Guidelines Manual there is a 14 point level increase to the offense level for an amount of loss more than \$250,000 but less than \$550,000, under § 2B1.1(b)(1)(G), the guideline section applicable to this case. However, in 2016, the United States Sentencing Commission reduced the point level increases under § 2B1.1 of the sentencing guidelines by two levels, thereby reducing § 2B1.1(b)(1)(G), the section that applies here, from a 14 level increase to a 12 level increase.

Pursuant to the policy statement in U.S.S.G. §1.B1.11, which provides that "the court shall use the Guidelines Manual in effect on the date that the defendant is sentenced," Hart is entitled to a two level reduction to his offense level because

the 2016 Guidelines Manual is in effect and will govern on the date of Hart's sentencing. As a result, Hart's total offense level is reduced from an offense level of 14 to an offense level of 12. With a total offense level of 12 and criminal history category of I, along with the two level reduction for acceptance of responsibility, the applicable sentencing guideline range is now 6-12 months. The parties agree that 6 to 12 months is the applicable guideline range in this case and request that the Court amend the presentence report to reflect this change.

#### **IV. CONCLUSION**

Hart committed serious criminal conduct over the course of a number of years by putting the sole interest of Hamilton before the best interest of the union members of Local 324 who Hart was entrusted to serve. This conduct ranged from Hart's participation in firing Kenneth Dombrow and the weekly Lunch Program to his illegal taking and concealment of the ill-gotten funds from the slate fund. Balanced against Hart's crimes and misconduct is his acceptance of responsibility and his cooperation in this case. Hart's sentence should reflect the serious crime he committed, while at the same time recognizing the very substantial efforts he has made to correct his wrongs. For those efforts, Hart should receive appropriate credit and due consideration of the Court. The government is confident that the

Court will impose an appropriate sentence.

Respectfully submitted,

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